

REACT

*R*ubbertown *E*mergency *A*CTion

A Campaign For a Clean and Safe Environment

January 24, 2005

Mr. Jon Trout
Louisville Metro Air Pollution Control District
850 Barret Avenue
Louisville, KY 40404

Re: REACT's comments concerning the second draft of the Strategic Toxic Air Reduction (STAR) Program

Dear Mr. Trout:

The board of Rubbertown Emergency ACTION wishes to express its appreciation for the opportunity to again submit comments concerning Mayor Jerry Abramson's Strategic Toxic Air Reduction Program. The numerous meetings held since September 2004 allowed all interested stakeholders, whether community residents, business members, lawyers, lobbyists or Air Pollution Control Board members, to carefully examine and critique the initial draft of the STAR program and thus contribute to the process of redrafting its provisions to address the concerns of both the business community and community residents. We also would like to note that each time REACT asked, we were afforded the opportunity to meet with the Air Pollution Control District to discuss the STAR program. These meetings were in addition to those we attended with other stakeholders to discuss the program with the District and its board members. The Air Pollution Control District's 201 page response to comments demonstrates to REACT that the District seriously considered every proposal and criticism discussed in the numerous meetings or submitted to the District in writing.

However, REACT does not want to give the impression that the only occasions interested stakeholders had to comment or act on toxic air pollution from industrial sources in Jefferson County has been since the STAR program was unveiled by Mayor Abramson four months ago. A decade ago, Rev. Louis Coleman, director of the Justice Resource Center and then Arnita Gadsden, director of the West Jefferson County Community Task Force, began raising public awareness of health concerns

associated with exposures to high levels of toxic air pollutants, particularly from Rubbertown industrial sources, and advocated the need for measures to be taken to significantly lower industrial emissions. Beginning in 2001, using information reported by industry to the U.S. Environmental Protection Agency and their own expertise, nationally known environmental experts Wilma Subra, chemist and recipient of a MacArthur Fellows Award, Dr. Mark Mitchell, an environmental health physician, and Denny Larson, a specialist in community air monitoring, also began warning of high levels of industrial emissions of toxic air pollution in Louisville and urged community organizations to form and press for a strong local regulatory package. In May 2003, REACT was organized as a group primarily comprised of people who lived near the Rubbertown industrial area. We were advised that there were several avenues available to influence future policies concerning the issue of toxic air pollution. Since then, REACT has not only attended but participated in West Jefferson County Community Task Force meetings with industry representatives, spoken at almost every Air Pollution Control District Board meeting and met with the Air Pollution Control District and staff members of Environmental Protection Agency Region 4. On several occasions we have spoken to Mayor Abramson and our metro council members concerning the need for a local comprehensive regulatory program that would address the uniquely serious problem of toxic air pollution in Louisville. Outside of work schedules and other responsibilities, REACT members wrote letters and made phone calls, canvassed neighborhoods to hand out leaflets, spoken to other organizations, traveled to other cities to solicit help and inform greater numbers of people of the campaign in Louisville for clean air. As volunteers, REACT members have had ample occasions and opportunities to express their opinion that a comprehensive clean air program was needed to significantly reduce levels of industrial source toxic air pollution in our neighborhoods. In short, the public has expressed its opinion to its elected representatives that a local comprehensive plan was necessary so that we could finally begin the process of making our air safe. Therefore, we hope that the time for further comment on the preliminary step of adopting the STAR program will come to an end and we can begin the process of ensuring a basic human right: safe air to breathe.

REACT's appeal for the approval of Mayor Abramson's Strategic Toxic Air Reduction program is a basic one – every human being should have a guaranteed and equally protected right to breathe safe air. REACT does not have the power or means to make threats to damage the economy of our city if we do not get our way or a vast amount of resources to persuade people to protect the status quo. We are unable to hire public relation firms, lawyers and lobbyists to make our case. We simply believe in the power of our position that the protection of our neighborhoods, and especially the children who

live, go to school, play and worship in our neighborhoods, is significant enough to impel us, and those given the responsibility to protect us, to do everything possible to protect their health, without further delay.

- Infants and children receive higher doses of air pollution into their lungs than adults due to higher ventilation rates. (1)
- According to the report on *Children's Environmental Health in Kentucky*, "children 2 years and younger are, on average, 10 times more vulnerable to carcinogenic chemicals than adults, and for some cancer-causing agents are up to 65 times more vulnerable." (2)
- Air pollution that might only cause minor irritation or inflammation in an adult can cause significant obstruction in the narrower airways of a child. (3)
- In Louisville, 17 chemicals were detected by air monitors at levels that posed a cancer risk greater than one in one million and another chemical was detected at an unhealthy level for non-cancer effects. (4)
- The air monitors that are still functioning and collecting data in the Rubbertown area continue to detect unsafe levels of toxic chemicals in the air. (5)

REACT recognizes that assertions concerning health risks from environmental exposure to hazardous air pollutants may be dismissed by businesses that emit hazardous pollutants in the air and by those who have financial and other interests in these businesses. A look at regulatory attempts to protect public safety reveals that targeted industries have consistently denied that their product(s), industrial waste or negligence harmed public health and then worked to delay the implementation of any regulation to protect public safety, whether by stalling the approval of regulations or delaying the implementation of the regulations by dragging them through the court system. Unfortunately, in too many cases public health was left unprotected as an industry rejected any study that could potentially hurt the sales of its product while demanding that studies prove to the last degree of human knowledge that its product posed any risk to human health. Although examples can be cited from the tobacco, asbestos, pesticide and automobile industries, one will suffice.

Now children bring home brochures from school warning parents of the dangers of exposure to lead and recommending that children be screened for lead levels in their blood system because of lead's unhealthy effects, including potential neurological damage. What the brochures perhaps should also tell parents is that in the face of mounting evidence that exposure to lead was poisonous to humans, some corporations continued to put lead into products people used everyday, including

gasoline, household paints and even toys while at the same time fighting and stalling attempts to regulate or ban its use. (6)

These comments are not intended to convey any other point than that the history of many large corporations reveals that their primary motivation is the maximization of their profits rather than the protection of public health. For this reason, people have had to look to their government and their elected representatives, the government's regulatory agencies and their appointed boards to protect public safety and fundamental human rights. The National Child Labor Committee in 1904 began calling on their elected representatives to pass legislation to stop the common practice of employing children as young as 7 years old in factories and in 1938 the Fair Labor Standard Act was passed to regulate child labor practices and protect the safety of children over a designated age who were employed. African Americans sought a guarantee and protection from the U.S. government of their right to equal access into private businesses such as lunch counters, restaurants, hotels, theaters, sports arenas and any other place available to the public and in 1964 the Civil Rights Act was passed to guarantee the right of equal access. People seeking environmental justice in Louisville have turned to their elected representatives, specifically Mayor Abramson, the local environmental protection agency and its board and are calling on them to protect public safety and ensure access to safe air. In the program summary of the STAR program, Mayor Abramson succinctly expressed the social contract that a government has with the people it represents when he stated the reason for the STAR program: "Protecting the health and safety of the people who live in this community must be our top priority."

However, a representative government must do more than protect its citizens. Native Louisvillian and Supreme Court Justice Louis Brandeis, for whom the University of Louisville School of Law is named, wrote that the Fourteenth Amendment's assertion of a right to life meant more than the right to exist – it also meant that a quality of life is a guaranteed right in the Constitution. Therefore, according to Brandeis, any entity responsible for depriving someone of a "good" life has an obligation to rectify that wrong. (7) REACT invites anyone who doubts that the unsafe levels of toxic air pollution emitted from industrial sources in Rubbertown have reduced people's quality of life to speak to Rubbertown residents who can tell them about the odors that force them inside on a late summer afternoon, waken them at night even when the windows are closed and cause children to cover their noses and mouths while they wait for their school bus in the morning. REACT urges the adoption and implementation of the STAR program as a balanced approach to rectify a wrong that has been committed against neighborhood residents in certain parts of our city that have been deprived of a quality of life that other residents in our city have enjoyed.

No one can be insensitive when jobs are threatened, especially in a globalized economy in which corporations are able to maximize their profits by closing factories and businesses in the United States and moving jobs to other countries where workers are paid significantly less, offered no benefits and community protection from pollution is little or non-existent. Every city now finds itself held hostage by the threat that some call a 'race to the bottom' in wages, benefits, and community protection as elected representatives are forced to compete with each other by putting their citizens on the auction block for corporate profits. REACT hopes that we are a city that will reject this type of economic shakedown. Instead, we believe in a city where people have a vision that will speak to the initiative and innovativeness befitting our standing as the sixteenth largest city in the nation – that we can have a clean and safe environment and a valued quality of life, in all facets, and not demand that people sacrifice well-being for a bottom line. On WFPL's State of Affairs radio program (Nov. 24, 2004), Mayor Abramson spoke of the importance of the STAR program in relation to the economy of the city: "I'm tired of losing businesses who go elsewhere because they are told by the 'elsewheres' that oh, by the way, the air quality in Louisville is one of the worst in the entire southeast and then they bring out the articles and bring out the EPA's studies ... we've got to jump that hurdle so that we can continue to grow our economic base and create jobs in our home town and be healthy." REACT concurs with that vision.

REACT further believes that the current debate concerning the STAR program is more than about economic bottom lines, industrial equipment, environmental calculus or legal arguments. We share the sentiment of Houston, Texas Mayor Bill White who recently stated after air monitors found excessive and unsafe levels of 1,3-butadiene in neighborhoods located near three facilities involved in rubber production, "This is an ethical and moral issue, not just a legal issue." (8) Urging people to read the Bible to discover the close relationship between God and the creation, Kentucky's Wendell Berry writes, "We will discover that ... our destruction of nature is not just bad stewardship, or stupid economics, or a betrayal of family responsibility; it is the most horrid blasphemy. It is flinging God's gifts into his face, as of no worth beyond that assigned to them by our destruction of them." (9) Judaic teaching in the Torah emphasizes that humans live in God's creation and God's creation ought to be protected from reckless destruction. (10) Talmudic literature over the generations has dealt with such actual problems as air pollution, often in the form of harm caused by smoke drifting from one person's property onto his neighbor's. It has done this as an extension of the basic law of damages – nobody has the right to cause unnecessary harm or discomfort to his neighbor's person or property. (11) In Islamic faith and religion, the Qur'an is rich in principles and proverbs that speak of Allah's design for creation

and humanity's responsibility for preserving it.(12) And in Buddhism is found the concept that human greed destroys the cooperation, or the balance, that must exist in the earth, air and water.(13)

REACT commends the political courage and vision of Mayor Abramson and the Metro Louisville Air Pollution Control District in developing a plan that while unique to the serious situation of toxic air pollution from industrial sources in Louisville can be viewed as an example by other cities currently facing a similar crisis. The second draft of the plan has appropriately considered the concerns of the business community and any attempt to lengthen the formal comment period or delay a vote by the Air Pollution Control Board should be seen as an attempt to stall the implementation of the program. Dr. Martin Luther King, Jr. revealed the true motivation of such tactics when, in his 1963 letter written from a Birmingham, Alabama jail cell, he responded to an earlier correspondence addressed to him from eight Birmingham clergy who wanted more time for negotiations among local leaders. (14) In the margins of a newspaper, the only paper he was given at the time to write on, Dr. King addressed the issue, "For years now I have heard the words "Wait!" This wait has almost always meant "Never." We must come to see, with one of our distinguished jurists that "justice too long delayed is justice denied."(15)

Our struggle for clean and healthy air is a campaign for environmental justice- a term now used by the U.S. Environmental Protection Agency. And we must not allow this unique opportunity for justice to be hindered by those who cannot stop the progress of justice's moral persuasion but will seek to mire its movement in calls of "Wait."

REACT is not completely satisfied with the current draft of the STAR program, as will be seen in our specific comments on the regulations, but we consider it an important first measure in cleaning our air and therefore urge its adoption. Finally, REACT endorses the Air Pollution Control District's proposal to submit a plan of action to address toxic air contaminants from non-road mobile sources and mobile sources through the use of alternative fuel vehicles, cleaner fuels, cleaner vehicles, effective transportation policies such as improved and increased public transit, improved and increased bike and pedestrian facilities. This is a vital component in a comprehensive package to ensure equal access to clean and safe air.

Specific Comments

Regulation 1.06 Section 1:

The owner or operator of a process or process equipment that is required to install, operate, and maintain this measuring and monitoring equipment *shall maintain records of monitoring data and make periodic reports of these data in a form, units of measure, and at the time intervals required by the District.*

Comment: REACT recommends that all monitoring data be required to be submitted to the District and thus available to public review. REACT is concerned with the level of accuracy in self reporting by industry (see, for example, *Who's Counting? The Systematic Underreporting of Toxic Air Emissions*, Environmental Integrity Project and the Galveston-Houston Association for Smog Prevention, June 2004. This report is available on the internet at: [\[www.environmentalintegrity.org/pub205.cfm\]](http://www.environmentalintegrity.org/pub205.cfm). We are unsure whether this regulation requires the monitored industry to submit continuous monitor data to the District upon request or a report that summarizes or averages the data. However, REACT is willing to ask for clarification during the formal comment period. REACT maintains that information sharing between the District and industry should be transparent with the public having the ability to test the veracity of information provided by industry to ensure that the public continues to have confidence in the ability of the STAR program to lower toxic emissions.

Regulation 1.06 Section 5.2.1.1.1

Category 1 TACs

Calendar Year 2004

Due 7-15-05

Comment: REACT concurs that the deadline for reporting on category 1 toxic air contaminants for 2004 should not be extended beyond the date proposed in the original draft of the STAR program given that the chemicals in this category were found to exceed the cancer risk level of one in one million. REACT is willing to prolong the deadlines for other reporting to allay industry's concern and remove a potential objection on the part of industry to this program.

Regulation 1.07 Section 3.1

If excess emissions during any planned startup or shutdown are expected to occur, then the owner or operator of the process or process equipment *shall notify the District in writing no later than 3 days before the planned startup or shutdown.*

Comment: REACT supports the attention to excess emissions from startup and shutdowns. In too many states, these emissions have been excused from regulatory measures even though they can emit a significant amount of chemicals into the air. However, REACT recommends that the community also be notified of these occurrences since an excess emission may cause an odor in the community, cause adverse health effects or aggravate already existing health conditions in residents living near the facility. Community residents can be notified electronically, by phone (through the Metro Louisville R-Call) or through emergency radio depending upon the level of emission expected during the startup or shutdown. REACT further recommends that the industry responsible for the excess emission should be the responsible party for establishing and working with the city to establish a community notification system. However, REACT is willing to work with industry representatives and city officials, after consideration of the STAR program, on such a system and does not wish this recommendation to be an obstacle for the implementation of the current draft of the STAR program.

Regulation 1.07 Section 3.2

If an unplanned startup or shutdown during which excess emissions are expected to occur is necessitated by events ... *then the notification shall be given to the District by telephone, facsimile, or electronic mail within 1 hour after the decision to start up or shut down was made, and, if the notification is given by the telephone, in writing as promptly as possible, but no later than 24 hours after that decision was made.*

Comment: REACT recommends that a system of community notification be developed. (See comment for Regulation 1.07 Section 3.1)

Regulation 1.07 Section 3.5

The written planned or unplanned startup or shutdown initial notification ... shall include the following information: (see sections 3.5.1; 3.5.2; 3.5.3; 3.5.4; 3.5.5; 3.5.6; 3.5.7; 3.5.8.)

Comment: REACT recommends that the report be posted electronically on the District's website upon receipt at the District's office. An exception can be in regard to 3.8.2 which involves the name,

address, telephone number and electronic mail address of the person responsible for providing the information. The public may be unaware of startup and shutdown occurrences and although the reports will be available through open records request, the public will not know to request the records if it doesn't know that the event has occurred. REACT believes that where the health of a community may be affected the community ought to have all the information made available to it as soon as possible with the least hindrance. Furthermore, we believe that this will increase the public's confidence in the ability of the STAR program to create community accountability among the industries that emit toxics into the air.

Regulation 1.07 Section 3.9

The District may require the owner or operator of a process or process equipment for which startups or shutdowns have resulted in *repeated excess emissions* to develop and submit a program to eliminate or minimize excess emissions.

Comment: REACT would prefer that the term 'repeated' be specifically defined to a number of excess emissions in a period of time. However, REACT submits this comment as an issue that can be revisited following board action on the STAR program.

Regulation 1.07 Section 4.7.7

An analysis of the cause of the malfunction and the steps that will be taken to prevent or minimize similar occurrences (excess emissions) in the future ...

Comment: REACT supports the emphasis placed on reporting and minimizing excess emissions caused by malfunctions. Excess emissions caused by malfunctions should not be considered an inevitable part of doing business and REACT welcomes steps that require industries to focus attention on these areas.

Regulation 1.07 Section 4.1

If excess emissions from a process or process equipment resulting from a malfunction, or from an unplanned startup or shutdown necessitated by a malfunction, occur or are likely to occur, the owner or operator of the process or process equipment shall, as promptly as possible, but no later than 1 hour

following the start of the malfunction or, *if a call to the 911 system was made, then no later than 2 hours following the start of the malfunction, notify the District ...*

Comment: REACT questions the reason that an industry would be allowed to wait an hour longer to notify the District office when the excess emission requires notifying emergency responders (911). When community residents notice a sharp chemical odor in the air they have been instructed to call the Air Pollution Control District and not 911 to report it. Yet this regulation would mean that emergency responders would know of an excess emission in a facility for one hour before the District and probably the community as well. REACT recommends that the District office be informed at the same time as emergency responders. REACT is willing to revisit this issue following board action on the STAR program.

Regulation 1.07 Section 4.7

No later than 15 calendar days after the excess emissions ended, *the owner or operator of the process equipment shall send a written report to the District that includes:* see 4.7.1; 4.7.2; 4.7.3; 4.7.4; 4.7.5; 4.7.6.

Comment: REACT recommends that this report be posted electronically on the District's website. If the public is unaware of an excess emission caused by a malfunction, members of the public will not know that a report has been filed and submitted to the District. Any hindrance to public knowledge of any measures taken to reduce excess emissions from malfunctions ought to be removed.

Regulation 5.21 Section 2.3.3 and section 2.6.3

In making the determination whether to approve the request, the District shall consider, among other factors whether, and the extent to which, the allowed emissions from the process or process equipment reflect the application of the best available technology for toxics. *The district shall also consider relevant, including both current and up to 25 years in the future, demographic and land use factors.*

Comment: Although REACT understands that the italicized (mine) portion of the regulation is a concession to concerns expressed by industry, REACT hopes that it will be used sparingly.

Given the negative impact that toxic air pollution will continue to have on the health of Louisville's residents and the city's economy if significant measures are not taken, REACT strongly recommends

that Mayor Jerry Abramson's Strategic Toxic Air Reduction program be approved expeditiously by the Air Pollution Control District Board.

Notes

1. California Children's Environmental Protection Act (1999); available on the internet at: [www.arb.ca.gov/ch/programs/sb25/sb25_text.pdf].
2. *Children's Environmental Health in Kentucky*, prepared by the Kentucky Environmental Commission; report is available on the internet at: [www.eqc.ky.gov/pubs/soke/soke04/childrens+environmental=health.htm]
The quote is from a letter sent from Environmental Quality Commission Chair Lindell Ormsbee to Mayor Jerry Abramson and can be read at: [www.apcd.org/star/comments/ky_environmental_quality_commission2004-11-03.pdf].
3. California Children's Environmental Protection Act (1999); see note 1.
4. West Louisville Air Toxics Study Risk Assessment Final Report, October 2003; available on the internet at: [www.apcd.org/toxics_risk/wlats_risk_assessment_report.pdf].
5. Air monitor data can be found at website of West Jefferson County Community Task Force. [http://208.249.124.184/ejp2/air_quality/database]
6. Gerald Markowitz and David Rosner, Deceit and Denial: The Deadly Politics of Industrial Pollution (Los Angeles: University of California Press, 2002)
7. Philippa Strum, Brandeis: Beyond Progressivism (Lawrence: University Press of Kansas, 1993)
8. "Mayor wants action on pollution", Houston Chronicle, Jan. 15, 2005
9. Christianity and The Survival of Creation, Wendell Berry, Currents. Article available on the internet: [www.crosscurrents.org/berry.htm]
10. Rabbi Saul Berman, "Jewish Environmental Values: The Dynamic Tension Between Nature and Human Needs." Article available on the internet at: [www.coejl.org/learn/je_berman.shtml]
11. Eliezer Segal, Why Didn't I Learn This In Hebrew School? (Lanham, MD: Jason Aronson Publishers, Inc., 1999)
12. "Doctrinal and Modern Ethical Resource for Ecological Concern in the Islamic Religion." Article available on the internet at: [http://hollys7.tripod.com/religionandecology/id5.html]
13. Donald K. Swearer, "Buddhism and Ecology: Challenge and Promise." Article is available on the

internet at: [www.environment.harvard.edu/religious/religious/Buddhism]

14. "Eight Alabama Clergymen: A Response to Martin Luther King, Jr." Letter available on the internet at: [www.stanford.edu/group/king/frequentdocs/clergy.pdf].
15. Dr. Martin Luther King, Jr., "Letter from a Birmingham Jail" Letter available on the internet at: [www.stanford.edu/group/king/popular_requests/frequentdocs/Birmingham.pdf].

/signed/
Timothy M. Duncan